HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
3 September 1947

UNITED STATES OF AMERICA VS KUNIO MIYATAKE

Review of the Staff Judge Advocate

1. The attached record of trial of Kunio Miyatake at Yokohama, Japan from 21 January 1947 to 31 January 1947, by a Military Commission appointed by paragraph 1, Special Orders No. 15, Headquarters Eighth Army, United States Army, dated 18 January 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Kunio Miyatake
AGE: Twenty-four (24)
RELIGION: Not shown
MARITAL STATUS: Not shown
RELATIVES: Not shown
EDUCATION: Graduate of Medical School
OCCUPATION: Doctor
MILITARY CAREER: Not shown
CLEMENCY RECOMMENDED BY COMMISSION: No.

DATE OF CONFINEMENT: 15 May 1946
DATE OF ARRAIGNMENT: 21 January 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 21 January 1947 to 31 January 1947
DATE OF SENTENCE: 31 January 1947
SENTENCE: CML for twenty (20) years.

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2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

Charge and Specifications:	Plea	Findings	Legally Sustained
Charge: At the times and places set forth in the specifications hereto attached, accused did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: In or about July 1943, at Kobe Branch PW Camp, accused did willfully and unlawfully mistreat Sergeant H. W. Burbridge, by beating him with a belt, by kicking and otherwise abusing him.	NG	G	Yes
Sp 2: On or about 15 July 1943, accused did willfully and unlawfully mistreat and torture Captain N. P. Weedon and Lieutenant Douglas H. Baird, by forcing them to stand at attention holding pails of water over their heads, by beating them with his fists, by kicking and otherwise abusing them.	NG	G	Yes
Sp 3: On or about 27 July 1943, accused did willfully and unlawfully mistreat Private H. H. Jaynes and one Private Lipscomb, by beating them with a belt, by kicking and otherwise abusing them.	NG	G	Yes
Sp 4: Between 10 June 1943 and 1 August 1943, accused did willfully and unlawfully mistreat and torture one Commander Harrington, one Lieutenant Colonel Fitzpatrick, Lieutenant Percy H. Cotton and about twenty-two others, by forcing them to stand at rigid attention staring into a blaring light for a long period of time, by beating and kicking them, by forcing	NG	G	Yes

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them to scrub the streets, and by humiliating and otherwise abusing them.			
Sp 5: In or about June 1943, accused did willfully and unlawfully mistreat and abuse Warrant Officer Dudley Gore, by beating him with his sword scabbard and by kicking him.	NO	G	Yes
Sp 6: In or about June 1943, accused did willfully and unlawfully mistreat James McDougall, by beating and otherwise abusing him.	NO	G	Yes
Sp 7: That sometime in the latter part of 1944, accused did willfully and unlawfully mistreat George E. Kilbourne, by beating and otherwise abusing him.	NO	NO	
Sp 8: Between 10 June 1943 and 31 August 1943, accused did willfully and unlawfully mistreat Lieutenant John Fuller, by beating and otherwise abusing him.	NO	G	Yes
Sp 9: Between 11 August 1943 and 16 August 1943, accused did willfully and unlawfully mistreat and abuse Private W. E. Hall, by beating and kicking him, and by neglecting and refusing to give him proper and adequate medical treatment, thereby contributing to his death.	NO	Guilty, except as to the words "thereby contributing to his death"; to the excepted words, Not Guilty	Yes
Sp 10: Between 10 June 1943 and 31 August 1943, accused did willfully and unlawfully mistreat and abuse numerous American and Allied Prisoners of War, by neglecting and refusing to give them proper and adequate medical attention and by forcing sick prisoners to work when physically unfit to do so.	NO	Guilty, except as to the words "and refusing"; to the excepted words, Not Guilty.	Yes
Sp 11: Between 10 June 1943 and 31 August 1943, accused did willfully and unlawfully mistreat and torture numerous American and Allied PW's, by beating them with fists and sword scabbard, by kicking them, by making unnecessary inspections in the late evening and early morning hours, thereby contributing to the death of W. E. Hall, an Australian PW, who, because of exhaustion after two early morning roll calls in one week, fell from a scaffolding at work on 12 August 1943 and received fatal injuries, and by otherwise abusing them.	NO	Guilty, except as to the words "and thereby contributing to the death of W. E. Hall, an Australian prisoner of war, who, because of exhaustion after two early morning roll calls in one week, fell from a scaffolding at work on 12 August 1943 and received fatal injuries"; of the excepted words, Not Guilty.	Yes
Sp 12: Between 1 November 1943 and 1 January 1944, accused did willfully and unlawfully mistreat Warrant Officer J. Healy, Norman Archer, and approximately sixty other British PW's by beating them with a sword scabbard and by otherwise abusing them.	NO	G	Yes

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Sp 13: Between 1 November 1943 and 1 January 1944, accused did willfully and unlawfully mistreat Thomas Knutsen, an American PW, by forcing him when ill to leave his bed and stand at attention, by then beating him and ordering him transported to a hospital in an open truck in the rain and cold, thereby contributing to and accelerating his death.	NG	Guilty, except as to the words "thereby contributing to and accelerating his death"; to the excepted words, not guilty.	Yes
Sp 14: Between 1 September 1943 and 15 August 1944, accused did willfully and unlawfully mistreat and torture numerous American and Allied PW's by making unnecessary inspections in the late evening and early morning hours, thereby depriving the prisoners of needed sleep, by beating them with fist and sword scabbard, by kicking them and by otherwise abusing them.	NG	G	Yes

Sentence Imposed: Confinement at hard labor for twenty (20) years.

Maximum Legal Punishment: Death

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3. Summary of Evidence:

a. For the Prosecution:

As to Specification 1: Lt. Colonel Flinion, a member of the U.S. Armed Forces and prisoner of War confined at Kobe Prisoner of War Camp from October, 1942 to September 9, 1945, was acquainted with Sgt. Burbridge. On 12 or 13 July 1943, the Sergeant was carrying out his duties as Mess Sergeant. After every meal, when the kitchen had been cleaned up, the kitchen detail would eat their evening meal. The accused came into the kitchen and asked Sgt. Burbridge why they were eating (R. 29). Accused ordered Burbridge to the guard room, where he was made to hold a bucket of water over his head and was severely beaten about the face and body by accused with a belt, using the buckle end. After about forty-five minutes of this punishment, he became unconscious and fell (R. 29, 30). Accused then kicked him and beat him with his sword scabbard. The entire beating lasted for over four hours (R. 30) (Ex. 3, 4, 5).

As to Specification 2: Lt. Colonel Flinion testified that he was acquainted with Capt. Vesden and Lt. Baird. These two officers were in their beds sleeping when accused ordered them to the guard room (R. 32). Accused made the two officers hold buckets of water over their heads for a period of thirty to forty-five minutes. Accused then hit them with his fists and his belt, using the buckle end, and kicked them until they fell to the floor unconscious. Then accused had water thrown on them and ordered them back to their quarters (R. 32, 33). From this beating Capt. Vesden suffered severe bruises on his thighs, a severe cut on his face, severe injury to his ribs, and a broken wrist. Lt. Baird received severe bruises and cuts on the face and his body was severely bruised and injured (R. 34) (Ex. 4, 6, 7, 8, 9).

As to Specification 3: Accused on 27 July 1943 administered a severe beating to POW Jeynes, an Australian. Jeynes was caught by a guard with an unlighted cigarette in his mouth. He was taken to the guard room where two guards beat him. The accused then came in and knocked Jeynes to the floor several times with his fists. While on the floor, accused flogged Jeynes with a heavy leather belt, using the buckle end. Jeynes became almost unconscious. He was then ordered to stand and when he did, accused knocked him down twice. Jeynes again lost consciousness and accused ordered a bucket of water thrown in his face. Jeynes' face was swollen and his legs and arms were bruised and badly swollen. Accused continued striking him with his fists and belt for about forty-five minutes (Ex. 11). During this beating another prisoner of war named Hiyamoto passed the accused and because of limited space, failed to give the proper Japanese salute, for which he received a severe beating from accused. Accused knocked Hiyamoto to the ground with his fists and struck

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him many times with the buckle end of his belt, as he did Joynes (Ex. 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 33).

As to Specification 4: Lt Colonel Flinlau testified that during his confinement at the prison hospital, he knew Commander Harrington, Lt. Colonel Fitzpatrick and Lt. Perry M. Cotton, who were also prisoners of war confined to the same prison hospital. Between 10 June 1943 and 1 August 1943, at Kobe Branch Prisoner of War Camp, accused ordered about 24 officers and enlisted men to the guardhouse, lined them up in two ranks in front of a glaring and bright light, and instructed Col. Flinlau to ask who left ashes in the ash tray in the officers quarters. Col. Flinlau spent about 45 minutes seeking this information among the prisoners lined up. They were ordered to rigid attention (R. 35). One civilian prisoner of war, Fredrickson, had been suffering from an abscessed impacted wisdom tooth. Accused was informed of his condition. He stood the civilian up in the corner and struck him. When Fredrickson fainted and fell to the floor, accused came over and severely kicked him three or four times in the ribs. In about ten minutes Fredrickson rose from the floor and attempted to stand at attention. Accused then struck him several times with his fists (R. 36). Accused then went down the ranks, starting with Harrington, and knocked each man down with his fist. If the man could not rise, accused would kick him while he was lying on the ground (R. 36). Accused ordered all to stand at attention and again he beat each man. At about 12:30 he ordered them back to their quarters (R. 36). The next morning the accused ordered the officers and a few enlisted men down to the guard room. They were given brooms and buckets and ordered to get down on hands and knees and scrub the streets in front of the camp (R. 36). They did this for about two and a half hours, during which time Japanese civilian and military personnel passed by (R. 36) (Ex. 13, 25, 26, 27) (R. 35, 83, 90, 91).

As to Specification 5: Dudley Gore was identified as being a British officer and prisoner of war confined at the Kobe Prisoner of War Camp (R. 36). On or about 12 or 15 June 1943, Gore was in charge of a work party known as Takenaka, consisting of about sixty men. Accused met the work party, pulled his sword scabbard off and beat Gore over the head and across his back and legs with it (R. 37). As a result of this beating Gore's head was "split" and his back severely bruised (R. 37, 90) (Ex. 7).

As to Specification 6: During the month of June, 1943, James McDougall of the Royal Scots Regiment was a prisoner of war at Kobe Prisoner of War Camp. During the period June through August, 1943, accused severely beat McDougall. On an inspection trip accused found a lead pencil in McDougall's blanket. Accused ordered all of the 110 men quartered on that floor, the third, to attention and asked who owned the pencil. McDougall, knowing it was Sunday and a rest day for the prisoners, said the pencil was his as he did not want the entire floor to be at attention all day. The prisoner was kicked in the stomach by accused. McDougall doubled up and fell to the floor. Accused then kicked him with both feet and beat him with his sword scabbard. McDougall finally rose and stood at attention. Accused then ordered McDougall to the guard room. This was about 11:00 a.m. McDougall was forced to remain at attention from this time until about 4:00 p.m. that afternoon. As a result of this beating he was under medical treatment for about one week for cuts of face and head from the beating with the sword scabbard, and injury to the stomach from kicks inflicted by accused (R. 37, 38) (Ex. 7).

As to Specification 7: (Not Guilty)

As to Specification 8: Between 10 June 1943 and 31 August 1943, accused while serving as medical officer and duty officer at the prisoner of war camp, severely beat one John Fuller, an Australian officer. Accused was on the first floor inspecting. Fuller was group leader of about 105 Australian prisoners of war and made every effort to obtain food and clothing for his men. During roll call accused beat Fuller across the arms with his sword scabbard and kicked him in the shins. Fuller suffered a very bad arm, for which he received medical care (R. 38, 39, 40) (Ex. 7, 14).

As to Specification 9: Pvt. W. E. Hall, an Australian prisoner of war, was confined at Kobe Branch Prisoner of War Camp during the month of August, 1943, and worked as a laborer at the Daku (R. 40). On or about 11 August 1943, while

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working on a ship unloading coal. Hall fell from a scaffold into one of the holds. He suffered injury to his head and was forced to stay on the ship until quitting time. He was then taken back to the prison camp, but was not given any treatment for some time. Then the cuts on Hall's face and head were cleaned and bandaged by the prisoner of war doctor. Accused did not render or provide any medical care (R. 48). On the third day after Hall was injured, accused came to the hospital and ordered Hall to stand at attention. When Hall failed to rise, accused kicked him in the legs and about the lower abdomen and body. Hall died about two hours after this beating and kicking (R. 50) (Pros Ex. 1, 15, 28, 29, 30) (Def Ex. A) (R. 40, 82, 86, 91).

As to Specification 10: Accused, while serving as the Japanese medical officer in charge of the prisoner of war camp hospital, would only permit fifteen prisoners of war to stay in camp when sick. These prisoners of war who were sick but not selected as part of the fifteen were forced to go to work on the docks and other assigned labor jobs (R. 53, 54). Those who reported to sick call were marched up and down the room, given numbers in Japanese and forced to answer their number. Then the person in charge at the time could pick at random only fifteen, as ordered by the accused (R. 53). Requests for medicine for the were only partially granted by accused, although he was in charge and there was a sufficient supply on hand at the camp (R. 35, 36, 53-54) (Ex. 4, 7, 15, 26, 27-32).

As to Specification 11: Accused, being the medical officer in charge of the prisoner of war hospital camp and serving as duty officer between 10 June 1943 and 31 August 1943, would make unnecessary surprise roll calls about two or three o'clock in the morning. He would order the prisoner of war patients to dress and stand roll call for at least one hour (R. 57). Accused would make them count off in Japanese, check their buttons and position of standing of rigid Japanese attention. Accused would slap or hit any who were not at rigid attention or failed to have a button fastened with his fist, a club, or sword scabbard (R. 57). The prisoners were kept at rigid attention for several hours and therefore deprived of needed sleep (R. 35, 36, 40, 41, 47-50, 91) (Ex. 1, 3, 4, 7, 9, 10, 14, 16-18, 21-24, 26, 28, 31-35).

As to Specification 12: Accused in or about November, 1943, called a surprise roll call of Group 3, the British unit of the prison camp. The prisoners of war did not come to attention quickly enough, and accused struck a prisoner of war by the name of Seeby with his fists and sword scabbard, cutting his head and beating him until he became unconscious (Ex. 36). Norman Archer, another prisoner of war, received the same type of beating from accused, along with about 58 other prisoners of war whom accused beat with his fists, kicked, and struck with his sword scabbard, cutting many about the head (Ex. 36-39, 42) R. 57, 58).

As to Specification 13: Thomas Knutson, an American prisoner of war confined at the prisoner of war camp and suffering from bronchio pneumonia during November or December, 1943, was lying in his bunk on the second tier on or about 23 December, 1943, when accused was inspecting the ward. Accused ordered Knutson to get up and stand at attention. Knutson was in a weakened condition but made an effort to get up and obey the order. He was slow in getting to the floor, having to take hold of the bunk to help himself down. Accused struck the American soldier several vicious blows in the face with his fists and kicked him several times (Ex. 36, page 2). On protest by the prisoner of war who was acting as liaison between the prisoners of war and Japanese camp personnel, the accused left and later issued orders to transfer Knutson to the hospital for treatment. He died on 8 January 1944 and bronchio pneumonia was given as the cause of death (Ex. 2, 36).

As to Specification 14: During the period 1 September 1943 to about 15 August 1944, accused while serving as medical officer and duty officer of the prisoner of war camp hospital would make surprise roll calls and inspections during the early morning hours. He would order the prisoners to dress and stand at rigid Japanese attention for hours at a time. When prisoners failed to stand at proper attention, were slow in getting into formation, or had a button unfastened, accused hit them in the face with his fist, kicked them about the body when they fell or became unconscious and struck them with his sword scabbard about the head and body, causing severe cuts and bruises on the face, head and body. This punishment continued for several hours (R. 57-59) (Ex. 36, 40, 41).

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b. For the Defense:

The accused, having been properly warned and advised of his rights as a witness in his own behalf by defense counsel, and the Commission and prosecution having inquired as to such warning and advice, elected to testify in his own behalf (R. 213, 214). Accused testified that he was 34 years of age, a graduate of a Japanese medical school, with one week's practice prior to his being drafted into the Japanese Army, and that he received three months of army medical training prior to his assignment (R. 214). Accused admitted that he punished prisoner Burbridge for violating the prison rule against eating after regular mess hours. He struck Burbridge with his belt. Burbridge bled from the nose but there was no permanent injury (R. 218, 219). Accused testified that he did not personally punish Captain Weedon and Lt. Baird, but ordered them to be punished at the same time. Part of the punishment was their being forced to hold buckets of water over their heads (R. 218, 219). Accused stated that Joynes and Lipscombe were guilty of infractions of prison rules. Joynes was punished for smoking and lying about it. Accused hit him about fifteen times with a leather belt (R. 220, 221). Lipscombe failed to salute in the proper Japanese manner (R. 221). Accused did not remember Lipscombe personally (R. 220). As to Specification 6, accused testified that he was making an inspection of the officer's quarters when he saw smoke floating in the air. Smoking was against the prison rules. Accused testified that he struck Commander Herrington who was in charge of the quarters and slapped other officers present. Accused denied that he made them stand before a glaring light or that he ordered them to scrub the streets (R. 222, 223, 224). Accused also denied beating or punishing prisoner Cord on the date charged. He did not remember any such punishment nor striking Cord with his sword scabbard (R. 225). Accused testified that on one of his inspections he found a pencil in the blanket of McDougall. Possession of pencils was also forbidden. He struck McDougall in the face twice with his fist. He denied administering any further punishment (R. 226). Accused denied punishing a prisoner of war named Elbourne. He did not remember such a person (R. 227). He did not remember any prisoner of war named Fullen, nor punishing anyone by that name (R. 226). Accused testified that on or about 12 August 1943, prisoner Hall was reported to have fallen from a scaffold while unloading coal. Hall was brought back to camp and given medical care. Accused denied that he neglected or failed to give Hall medical care or that he kicked Hall as charged. He did not have Hall moved to the hospital because he considered Hall's condition to be such that removal to the hospital would be dangerous. Accused testified that Hall was washed and bandaged. He did not issue an order prohibiting the prisoner medical officer from giving Hall medical attention (R. 228-231, 233). Accused denied that he abused other prisoners of war, failed to give them medical treatment, or forced the sick to work (R. 234). He denied calling surprise roll calls and depriving Hall and other prisoners of needed sleep. He denied any responsibility for Hall's accident, and punishing prisoners by beating them with his sword scabbard as charged in Specifications 10 and 11 (R. 234, 235). As to prisoner of war Archer, accused testified that he did not remember him; he did remember Seaby (R. 235). On one occasion when accused entered a room, one of the prisoners was sitting down and did not rise to attention. Accused asked him if he were sick and the prisoner replied he was not. For failing to stand at attention, accused struck him once with his sword scabbard. He then struck Seaby twice over the temple but did not strike or abuse any of the other prisoners at that time (R. 235, 236). Accused testified that he did not make unnecessary roll calls during early morning hours for the purpose of depriving prisoners of their sleep, or that he beat them with his fists and sword scabbard during the period of time alleged in Specification 14 (R. 236). As to Specification 15, accused testified that during an inspection of one of the sick wards, he found Knutsen suffering from bronchitis. After examination of Knutsen he ordered that he be sent to the hospital by truck, which was a three to five minute trip. Accused denied that in sending Knutsen by truck, he contributed to his death. He also denied kicking or beating Knutsen. He did not remember a prisoner of war named Sanders (R. 236, 237). He did remember prisoner Dr. David Hockman but denied that either Sanders or Hockman reported Knutsen's condition to him or made any protest about sending Knutsen to the hospital by truck (R. 238, 239). Accused stated that he was not acquainted with the Geneva Convention, and that it was a practice in the Japanese army to personally punish persons for infractions of rules and not to court-martial them for minor offenses (R. 240).

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Cohima testified he was a master sergeant in the Japanese army during 1943 and served at Kobe Prisoner of War Camp. He stated that it was the practice in the Japanese army for superior officers to administer punishment for minor violations of rules and to call surprise roll calls when they were not expected (R. 160). During his time at the camp, orders came through from Col. Yurata that corporal punishment was prohibited (R. 164). The orders were never revoked (R. 164). He had heard of punishment inflicted by superiors, using belts, fists and swords, but did not personally witness such punishment (R. 168).

Juro Maniki, a Japanese doctor of 22 years experience (R. 170), Captain Jones and Lt. Gibson, both medical officers in the U.S. Army attached to the 155th Station Hospital, Yokohama, Japan, qualified as expert witnesses. Hypothetical questions pertaining to the treatment administered by accused to Hall and Mutsen were propounded to the three doctors. Their expert opinion was in effect that the accused was not negligent, and that he administered proper medical care and attention (R. 191-206).

Inui testified that he served under the accused during 1943 and 1944 as medical sergeant in charge of medical supplies and medical reports (R. 180). He accompanied accused on his trips to other camps. He spent about three days a week at Kobe. The prisoner of war doctor attended all sick patients except serious cases, which were referred to the accused. All medicines were requested through the Japanese on duty (R. 181). Hall was examined by accused and Captain Boyce. The two doctors agreed that his injury was serious and he should not be moved (R. 183). Accused found that Hall was suffering from a broken bone and hemorrhage. He directed that cold packs be applied to Hall's bruises, his cuts disinfected and bandaged, and injections of glucose and camphor given every day at certain hours (R. 184). A medical history report was prepared by the witness under direction of accused. Hall remained unconscious from the hour he was brought back to camp until his death about five days later (R. 186).

Isojiro Okusaki testified as a witness for the accused. Between the dates of 10 June 1943 and 1 September 1943 the witness served under the accused. He was in charge of the medical supplies at the prison camp. The prisoner of war doctor had access to all medical supplies needed except drugs and poisonous medicines. Drugs and poisonous medicines were locked up and issued only with the approval of the Japanese medical officer. The witness knew of no instance when the prisoner of war doctor was refused medicine or medical supplies (R. 130-132). During the absence of accused from camp the witness was in charge. He conducted inspections and sick calls, deciding which prisoners who reported for sick call were to report for duty on labor details and which were to remain in camp (R. 131, 132). Hall was returned to camp about 5 P.M. on a stretcher. The accused and the prisoner of war doctor examined Hall. Both decided that because of Hall's injury, he should not be moved to the hospital. Hall was suffering from a hemorrhage and a broken bone. Accused directed that Sergeant Usui apply cold packs to the bruises, and give injections of camphor and glucose at certain hours. The witness and other medical orderlies attended Hall, as accused instructed, until Hall's death (R. 133, 134). The next day accused and the prisoner of war doctor made another examination of Hall, who never regained consciousness prior to his death about four days later (R. 134).

Yasuji Moriyoto, branch camp commandant at Kobe and Kawasaki, stated that accused served under him. Witness saw Hall the morning after the accident. His head was bandaged and he had been crushed. He was "breathing from the shoulders". Accused advised witness as to Hall's injury, and stated that Hall was suffering from a hemorrhage and a broken bone. Accused recommended that Hall not be moved until his condition improved. Four or five days later Hall died (R. 112). The prisoner doctor did not complain that accused had neglected or refused treatment or medicine for Hall (R. 113). When accused was not on duty, Sergeant Usui would select the sick prisoners of war who were to stay in camp or work on labor details (R. 115).

Kondo, a witness for accused, testified that he was a medical orderly and had served under the accused. He did not see accused kick Mutsen as charged. Accused examined Mutsen and ordered that he be sent to the hospital on a truck

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instead of being carried on a litter. The truck trip was only three to five minutes from the camp; by litter it was twenty-five minutes from camp (R. 141, 142).

Murata, who held the rank of colonel in the Japanese army, testified that he had served for thirty-two years in the Japanese army. He was fifty-seven years of age. During 1943 and 1944 he was camp commandant in Osaka and had approximately twenty-two camps under his command (R. 148). All orders and instructions concerning use of prisoners for labor came to him from the commander of the central area (R. 149). Accused served as medical officer under the witness at Yobo and six other camps during the time alleged in specifications 1 to 14 inclusive. The amount of food supplied to the prisoners was a located by higher headquarters. Accused only carried out instructions as to the amount of the rations (R. 150). Murata testified that no orders or authority from higher headquarters were issued, authorizing physical violence as punishment of prisoners of war (R. 155). It was the custom of the Japanese army to punish but not to strike with fists or sword scabbard in administering punishment. From childhood Japanese were taught that punishment was proper and in the army punishment was carried out. The War Ministry issued an order not to strike prisoners of war and the witness instructed those under him to obey the order (R. 157-159).

4. Errors and Irregularities:

a. There are no errors or irregularities which injuriously affect any substantial rights of the accused. The trial was held without partiality and adequate opportunity was given the accused to present any matters in his defense that he might desire. The accused was ably represented by counsel and fully cooperated in his defense.

b. There have been no questions raised in the record that were not properly decided by the Commission upon the hearing of the evidence presented. Two-thirds of the Members of the commission present at the time of the findings and sentence concurred in the same.

c. The various objections made during the trial were properly ruled upon by the Law Member of the Commission (R. 10-12 as to Exhibit 3) (Ex. 4, par 13, 17) (R. 41-46, 47, 58, 59, 67, 69, 70, 82, 86, 94, 95, 96, 98, 99, 100, 113, 123, 125, 128, 163, 162, 200, 201, 210, 244-247); and the motions submitted during the trial were properly ruled upon by the Law Member (R. 4, 7, 103, 105, 107, 120) None of these rulings can be said to be prejudicial to the rights of the accused. There is, however, sufficient legal evidence which in itself supports the findings and sentence of the Commission, in view of the compelling evidence of guilt properly in evidence which is of such quantity and quality as practically to compel in the minds of conscientious and reasonable men the finding of guilty, the errors or irregularities appearing in the record of trial are not deemed prejudicial to the accused. There are no mitigating circumstances and no justification for the war crimes committed by accused (par 5d of SCAP letter dated 5 December 1945, filed in the record of this case).

5. Opinion:

a. The record is legally sufficient to sustain the findings of the Commission and the sentence imposed (R. 262-263).

b. The Charge and Specifications herein allege violations of the Laws and Customs of War, committed on the dates alleged in the various specifications by the accused, an enemy national, against members of the United States Armed Forces, the Australian Armed Forces, and the British Armed Forces, at a time when a state of war existed between Japan and the nations above named. Accordingly, the Commission which was appointed to hear the case had jurisdiction of the prisoner and subject matter under "CAP Regulations AG 000.5 (5 December 1945)LP, subject: Regulations Governing the Trials of Accused War Criminals, and amendments thereto, as established by the Supreme Commander for the Allied Powers. The Commission was constituted by proper authority and had jurisdiction of both the accused and the offense.

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c. There is sufficient evidence in the record of trial, including the forty-two affidavits properly admitted in evidence, which conclusively supports the finding of guilty as to the various specifications herein and establishes the guilt of the offenses against the accused as alleged. The evidence fully discloses that eyewitnesses, prisoners of war, did observe and were victims of the beatings, kickings and ill treatment inflicted by the accused, who was properly identified by the persons named in the specifications.

6. Recommendations.

a. The record contains a letter from the Chief of the Appeals Branch and the Chief of War Crimes Defense Division dated 14 July 1947, stating that no motion asking for the disapproval or modification of the findings and sentence would be filed in behalf of accused.

b. There has been filed a letter for clemency signed by thirty-nine (39) members of the "Women Society of Tokiwa-Hara", stating that accused was a medical student just prior to entering the Japanese military service; that his personality was gentle and sincere.... He is affectionate and kindness to others (and) a typical gentleman." The thirty-nine signers of the letter could not believe the accused "guilty of a sinful act"; that the accused was "a peace-loving democrat to put Potsdam agreement's principles into practice and an excellent student and a beneficial physician to the welfare of nation." The letter for clemency above referred to does not constitute or suggest newly discovered evidence on behalf of accused, and if the statements be true, would not if considered by the Commission justify any change in the findings.

c. The Commission sentenced the accused to confinement at hard labor for twenty (20) years. The sentence is legal.

d. The accused was found guilty of all specifications charged, except Specification 7, of which the Commission's finding was "not guilty". Of Specifications 9, 10, 11 and 13, the Commission found accused guilty with exceptions (p. 263). The offenses charged were crimes against the laws and customs of War, which included kicking, slapping and beating of prisoners, using the buckle end of a belt and a sword scabbard, humiliation and degradation of officer prisoners, causing sick prisoners to work when physically unfit, making unnecessary inspections and depriving the prisoners of needed sleep. The crimes of which the accused has been convicted, and the accusations against accused by so many prisoners of war, clearly indicate why the accused was known as the "Bad Doctor" among the prisoners of war confined at the camp; they also clearly indicate a pattern of criminality which is especially shocking when one realizes it was applied to helpless captives unable to challenge any action of the accused against them. It is the opinion of the reviewer from the evidence in the record that the beating and kicking of Hall, and the relentless slapping and beating by accused with belt and sword scabbard while on sick call, were examples of viciousness beyond comprehension. Accused's conduct as a medical officer, plus the allegations in the many affidavits and Col. Filskau's personal testimony, that physical punishments were often inflicted out of sheer meanness on accused's part and in defiance of a policy of restraint advocated by his superior officers, show despicable arrogance and personal contempt of accused for the basic rights of his fellow men.

e. The sentence of the Commission is not considered severe or adequate for the crimes committed, and for which accused was convicted (p. 226). Clemency is not merited. Accused has been confined since 15 May 1946; he was tried at Yokohama, Japan between 21 January 1947 and 31 January 1947, and was sentenced on 31 January 1947.

f. It is recommended that the sentence be approved. In compliance with the established policy, owing to the length of time accused spent in confinement prior to the date of sentence, it is recommended that five and one-half (5½) months of the confinement be remitted. Sugamo Prison, Tokyo, Japan, is the appropriate place of confinement.

PURL: https://www.legal-tools.org/doc/6cefcd/

7. Action:

Attached hereto is a form of action designed to carry into effect the above recommendations, should they meet with your approval.

GUYNOR R. TAYLOR
Reviewer
Judge Advocate Section

I concur. However, in view of the many evidence of sadistically vicious acts committed by a member of a profession from whom humanity expects kindness and gentleness, the sentence is believed to be grossly inadequate.

WILLIAM R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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